

Zoning Text Amendment No: 07-02
Concerning: Buildable lots - Clarification
Draft No. & Date: 1 – 2/7/07
Introduced: February 13, 2007
Public Hearing: March 27, 2007; 1:30 p.m.
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Council President Praisner and Councilmembers Berliner, Leventhal & Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- clarifying text of the 1928 Zoning Ordinance; and
- generally amending the special provisions for conditions predating 1958.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-B-5 “SPECIAL PROVISIONS FOR CONDITIONS PREDATING
 1958”
Section 59-B-5.3 “One-Family Dwelling”

*EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing laws
by the original text amendment.
[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.
Double underlining indicates text that is added to the text
amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-B-5 is amended as follows:

**DIVISION 59-B-5. SPECIAL PROVISIONS FOR CONDITIONS
PREDATING 1958.**

* * *

59-B-5.3. One-family dwelling.

Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. The dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the lot was recorded, except that:

- (a) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance;*
- (b) one-family dwellings and accessory structures on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgomery County Planning District must comply with the setback, yard, and area coverage standards applicable to the lot in the 1956 Zoning Ordinances for the Upper Montgomery Planning District;

* The 1928 Zoning Ordinance is attached to Section 59-B.

- (c) the maximum building height and maximum building coverage in effect when the building is altered, renovated, [or] enlarged, or replaced by a new dwelling applies to the building; and
- (d) an established building line setback must conform to the standards for determining the established building line in effect for the lot when any alteration, renovation, [or] enlargement, or replacement by a new dwelling occurs. Any building permit issued before November 23, 1997 must conform to the development standards in effect when the lot was recorded.

* * *

Sec. 2. Attachment to Section 59-B:

The 1928 Zoning Ordinance referred to in Section 59-B-5.3 (a)

Section 1 - DEFINITIONS

For the purpose of this ordinance certain terms and words are herewith defined as follows:-

Words used in the present tense include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory.

Any word not herein defined shall be construed as defined in the Building Code.

1. Accessory Building: A subordinate building located in and occupying not more than 30 per cent of the rear yard of the main building, whose use is incidental to that of the main building,

- and which does not exceed 15 feet in height above the ground level.
2. Alley: A public way designated as an alley on the subdivision record plat.
3. Apartment House: Dwelling occupied otherwise than as a single family or semi-detached dwelling.
4. Boarding House: A building other than a hotel, where lodging and meals for five or more persons are served for compensation.
5. Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels, and when separated by division walls from the ground up each portion of such structure shall be deemed a separate building.
6. Building Line: A line beyond which property owners or others have no right to extend a building or any part thereof.
7. Cellar: That portion of a building below the first floor joists, the floor of which is more than one-half the clear ceiling height below the adjacent ground. Such a story may not be used for habitation.
8. Commission: Maryland-National Capital Park and Planning Commission.
9. Court, Outer: An open, unoccupied space on the same lot with a building, opening upon a street, alley, yard or set-back.
10. Curb Level: The mean level of the established curb in front of the building.
11. Depth of Rear Yard: The mean horizontal distance between the rear line of the building and the center line of the alley, where an alley exists, otherwise the rear lot line.
12. Depth of Lot: The mean horizontal distance between the front lot line and the rear lot line.
13. District: That portion of the Maryland-Washington Metropolitan District located within Montgomery County.
14. Dwelling, Single: A building constructed for occupancy by a single family.
15. Dwelling, Semi-detached: A building arranged and built to accommodate two families separated by a common party wall between.

16. Family: Any number of individuals living and cooking together on the premises as a single housekeeping unit.
17. Garage, Private: A garage with capacity for not more than three steam or motor driven vehicles, for storage only.
18. Garage, Public: Any building or premises used for housing or care of more than three steam or motor driven vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.
19. Height of Building: The vertical distance measured from the mean curb level to the level of the highest point of the building.
20. Home Occupation: An occupation in connection with which there is used no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; in connection with which there is kept no stock in trade nor commodity sold upon the premises, no person employed other than a member of the immediate family residing in the premises, and no mechanical equipment used except such as is permissible for purely domestic or household purposes.
21. Lot: Land occupied or to be occupied by a building and its accessory buildings and including such open spaces as are required under this ordinance, and having its frontage upon a public street.
22. Lot, Corner: A lot fronting on two or more streets intersecting at an angle of not more than one hundred thirty-five (135) degrees.
23. Lot, Interior: A lot with frontage on but one street.
24. Lot, Through: A parcel extending through a block from one street to another.
25. Lot Lines: Lines bounding a lot.
26. Non-Conforming Use: A building or premises occupied and used for a purpose that does not conform with the use regulations in the district in which it is located.
27. Stable, Private: A stable with a capacity of not more than four horses.
28. Stable, Public: A stable in which horses are kept for remuneration, hire or sale.

29. Story: That portion of the building included between the surface or any floor and the surface of the floor next above it, or if there be no floor above it then the space between such floor, and the ceiling above it, provided, that a cellar shall not be considered a story.
30. Street: A public thoroughfare not designated on the record plat as an alley.
31. Structural Alterations: Any change in the supporting members of a building, such as a bearing walls, columns, beams or girders, excepting such alterations as may be required for the safety of the building.
32. Yard Depth of Rear: The minimum horizontal distance between the rear line of a building, other than of a building for accessory use, and the rear lot line or center of alley in case an alley exists.
33. Yard Side: An open unoccupied space on the same lot with the building, between the building and the side lot line and extending from the street line to the rear yard.
34. Zone: Areas within the District for which the regulations governing the use of buildings and premises are the same.

SECTION II – DISTRICT REGULATIONS

For the purpose of this ordinance the District is hereby divided into five zones as follows:-

- “A” Residence Zone.
“B” Residence Zone.
“C” Residence Zone.
“D” Commercial Zone.
“E” Industrial Zone.

The boundaries of said zones shall be as shown upon the map attached hereto and made a part of this ordinance designated as “Zoning Map” and said map and all notations, references and other data shown thereon is by this reference made a part hereof to the same extent as if the information set forth on said map were fully described and incorporated herein.

SECTION III – “A” RESIDENCE ZONE

(A) Use Regulations: Unless hereinafter provided, no building or premises shall be used and no building shall be hereafter erected or altered, except for one or more of the following uses:

1. Single dwellings

2. Churches

3. Public Schools

4. Libraries

5. Farms, truck gardens or nurseries

6. Private clubs, hospitals, sanitariums and institutions of an educational, philanthropic, or eleemosynary nature, gravel pits and stone quarries, subject to the approval of the Commission, and with written consent of the owners of 75 per cent of the property within 200 feet of the propose establishment.

7. Accessory buildings (see Section VIII, 2) and uses incident to any of the above uses when located on the same lot and not involving the conduct of a retail business, and including:-

(a) One private garage or private stable when located not less than sixty (60) feet from the front lot line, not less than thirty (30) feet from the side street in the case of a corner lot or when built as a part of the main building.

(b) Home occupations engaged in by the occupants of a dwelling.

(c) Professional office of a physician, surgeon, dentist, musician, artist or similar vocation, when situated in the same building used by such practitioner as his or her private dwelling, provided that no name plate shall be displayed exceeding one square foot in area and containing the name and occupation of the resident of the premises.

(d) A sign not more than six (6) square feet in area appertaining to the lease, hire or sale of the building or premises on which such sign is displayed. A renewable permit for one year periods, for the erection and maintenance of a larger sign for real estate purposes, may be

issued with approval of the Commission.

(B) Height Regulations: In the "A" Residence Zone no building shall exceed a height of forty (40) feet or three (3) stories, except as provided in Section VIII, 1 and 2.

(C) Area Regulations: In the "A" Residence Zone the minimum dimensions of yards and the minimum lot area per family, except as provided in Section VIII shall be as follows:-

1. Lot area per family: Each dwelling hereafter erected or altered in this zone shall occupy a lot with a minimum area of five thousand (5,000) square feet and a minimum width of fifty (50) feet at the front building line. No lot area shall be so reduced or diminished that the yards or open spaces shall be smaller than prescribed by this ordinance.

2. Building Line: There shall be a setback line of not less than twenty-five (25) feet, provided that, when the majority of buildings built on one side of a street between two intersecting streets at the time of the passage of this ordinance have been built with a minimum setback of more or less than twenty-five (25) feet from the street property line, no building hereafter erected or altered shall project beyond the minimum setback line so established; provided that no building shall be required by this Ordinance to set back more than forty (40) feet in any case, and provided further that this regulation shall not be interpreted as to reduce the buildable width of a corner lot, facing an intersecting street and which is separate and distinct from adjacent lots and is included in a plat of record at the time of passage of this ordinance, to less than twenty four (24) feet.

3. Side Yard: There shall be a side yard of not less than seven (7) feet in width on each side of a dwelling, except as provided in Section VIII.

4. Rear Yard: There shall be a rear yard, having a minimum depth of twenty (20) feet except as provided in Section VIII, 4.

5. Accessory Building: An Accessory building not exceeding fifteen (15) feet in height may occupy not more than thirty-five (35) per cent of the rear yard, except as provided in Section VIII, 2.

SECTION IV – “B” RESIDENCE ZONE

(A) Use Regulations: Unless hereinafter provided, no building or premises shall be used and no building shall be hereafter erected or altered, except for one or more of the following uses:

(B) Any use permitted in the “A” Residence Zone.

1. Semi-detached dwellings.

(C) Height Regulations- Same as for “A” Residence Zone, Section III, (B).

(D) Area Regulations- Same as for “A” Residence Zone, Section III, (C), except that in the case of semi-detached dwellings the minimum lot area per family shall be two thousand five hundred (2,500) square feet, with one side yard eight (8) or more in width.

SECTION V - “C” RESIDENCE ZONE

(A) Use Regulations- Unless hereinafter provided no building or premises shall be used and no building shall be hereafter erected or altered, except for one or more of the following uses:

1. Any use permitted in the “B” Residence Zone.

2. Apartments and flats.

3. Boarding houses.

4. Public garages for storage purposes only, and where no repair facilities are maintained, when located not less than sixty (60) feet from the street line, thirty (30) feet from the side street line in the case of a corner lot and subject to Proviso 2 of Section VI.

(B) Height Regulations: No building shall exceed a height of seventy-two (72) feet and six (6) stories, except as provided in Section VIII, 2.

(C) Area Regulations: Same as for “A” Residence Zone, Section IV, (C) except that in the case of apartments and flats the minimum lot area per family shall be six hundred twenty five (625) square feet and each side yard shall be increased by two (2) inches for each foot of building height above forty (40) feet.

SECTION VI – “D” COMMERCIAL ZONE

(A) Use Regulations: Unless otherwise provided in this ordinance all buildings and premises may be used for any use permitted in the “C” Residence Zone, Section V, (A), or for any other use except the following:

1. Bakery employing more than 5 persons (see proviso 2 below).
2. Blacksmith or horseshoeing establishment.
3. Bottling works.
4. Carting, express or hauling yard, storage or fuel yard (see proviso 2 below).
5. Contractor’s plant or storage thereof.
6. Cooperage.
7. Ice Plant or storage house for more than ten (10) tons capacity.
8. Laundry employing more than 5 persons (see proviso 2 below).
9. Lumber yard.
10. Machine shop employing more than five (5) persons.
11. Public garage or public stable (see proviso 2 below).
12. Stone Yard.
13. Storage or baling of scrap, paper rags or junk.

14. Uses excluded from the “E” Industrial Zone.

15. Any kind of manufacture other than manufacture clearly incidental to a retail business conducted on the premises, or any manufacturing or treatment which would constitute a nuisance.

16. Gasoline or oil filling stations (see proviso 2 below).

17. Undertaking establishments or funeral parlors (see proviso 2 below).

Proviso 1: Printing shops and the publishing of newspapers may be permitted in the “D” Commercial Zone.

Proviso 2: A bakery or laundry employing more than 5 persons, a fuel yard, a gasoline or oil filling station, a milk distributing station, undertaking establishment or funeral parlor, a public garage, machine shop, or a service station adjoining an establishment for the sale of new automobiles and operated in connection therewith may be established or erected in the “D” Commercial Zone with approval of the Commission and the written consents of the owners of 75 per cent of the property within 200 feet of the proposed establishment. Provided further, that if such establishment fronts on a public alley and no part of it is located in a building any portion of which lies less than 50 feet back from any building line, consents of the owners of two-thirds of the property within 90 feet of the proposed establishment shall be required.

In computing the area of consents required under this regulation, so much of the area of all property as is used as a bakery, gasoline filling station, laundry, milk distributing station, public garage or stable, shall be counted as consenting.

With the approval of the Commission, car barns, electric sub-stations and other public utility uses, not including steam power plants, may be erected established or extended in the “D” Commercial Zone, when deemed necessary by the Commission to the public convenience and welfare.

(B) Height Regulations: In the “D” Commercial Zone no building shall exceed a height of seventy-two (72) feet or six (6) stories, except as provided in Section VIII, 2.

(C) Area Regulations: For property occupied for residential use in the “D” Commercial Zone, the minimum dimensions of yards and the minimum lot area per family, except as provided in Section VIII, 3, shall be as follows:

(1) Outer Courts: The least dimension of an outer court shall be not less than five (5) feet, nor less than two (2) inches for each foot of height of such court.

(2) Nothing herein contained shall prevent the use of the entire lot between the front building line and the rear lot line, for the uses, other than residential, that are permitted in the zone.

SECTION VII – “E” INDUSTRIAL ZONE

(A) Use Regulations: In the “E” Industrial Zone buildings and premises may be used for any purpose whatsoever; provided however, that no building shall be erected or premises used for any of the following uses until and unless the location of such use shall have been approved by the Commission after public notice and hearing.

1. Abbatoirs.
2. Acetylene gas manufacture.
3. Ammonia bleaching powder or chlorine manufacture.
4. Arsenal.
5. Asphalt manufacture or refining.
6. Blast Furnace.
7. Boiler works.
8. Brick, tile, or terra cotta manufacture.
9. Candle manufacture.
10. Celluloid manufacture or treatment.

- 268 11. Coke ovens.
- 269 12. Creosote manufacture or treatment.
- 270 13. Disinfectants manufacture.
- 271 14. Distillation of bones, coal or wood.
- 272 15. Dyestuff manufacture.
- 273 16. Exterminators and insect poisons manufacture.
- 274 17. Emery cloth and sandpaper manufacture.
- 275 18. Fat rendering.
- 276 19. Fertilizer manufacture.
- 277 20. Forge Plant.
- 278 21. Gas (heating or illuminating) manufacture.
- 279 22. Glue, size or gelatin manufacture.
- 280 23. Gunpowder manufacture or storage.
- 281 24. Fireworks or explosives manufacture or storage.
- 282 25. Incineration or reduction of dead animals, offal or garbage.
- 283 26. Lamp black manufacture.
- 284 27. Lime, cement or plaster of Paris manufacture.
- 285 28. Match manufacture.
- 286 29. Oil cloth or linoleum manufacture.
- 287 30. Oiled, rubber or leather goods manufacture.
- 288 31. Ore reduction.
- 289 32. Paint, oil, shellac, turpentine or varnish manufacture.
- 290 33. Paper and pulp manufacture.
- 291 34. Petroleum refining or storage.
- 292 35. Potash refining.
- 293 36. Printing ink manufacture.
- 294 37. Pyroxylin manufacture.
- 295 38. Railroad yard or roundhouse.

39. Rock Crusher.

40. Rolling mill.

41. Rubber or gutta percha manufacture or treatment.

42. Salt works.

43. Sauerkraut manufacture.

44. Sausage manufacture.

45. Saw mill.

46. Ship yard.

47. Shoe blacking manufacture.

48. Smelting of iron.

49. Soap manufacture.

50. Soda and compound manufacture.

51. Stockyards.

52. Stone mill or quarry.

53. Stove polish manufacture.

54. Sulphuric, nitric, or hydrochloric acid manufacture.

55. Tallow, grease or lard manufacture or refining.

56. Tanning, curing or storage of leather, raw hides or skins.

57. Tar distillation or manufacture.

58. Tar roofing or tar waterproofing manufacture.

59. Tobacco (chewing) manufacture or treatment.

60. Vinegar manufacture.

61. Wood pulling and scouring.

62. Yeast plant.

63. Such uses as, in the opinion of the Commission may become so noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise as to justify exclusion from the "B" Industrial Zone.

(B) Height Regulations: Same as for "D" Commercial Zone, Section VI (B).

(C) Area Regulations: Same as for “D” Commercial Zone, Section VI, (C).

SECTION VIII - HEIGHT AND AREA EXCEPTIONS AND GENERAL REGULATIONS

Height and area requirements shall be subject to the following exceptions and regulations:

1. In any residential zone wherein are permitted public and semi-public buildings, hospitals, sanitariums or schools, such buildings may be erected to a height not exceeding seventy-two (72) feet, when set back from all lot lines not less then one foot for each foot such building exceeds the height restriction for the zone in which it is located, this increased set back to be in addition to the required side yard for such zone.

2. Chimneys, towers, tanks, penthouses or necessary mechanical appurtenances may be erected to their required height. An accessory building may be built to a height of two stories to provide quarters for servants employed on the premises.

3. In the case of a lot or parcel of land having a width of forty (40) feet or less, and which is included in a plat of record at the time of the passage of this ordinance, there shall be a side yard on each side of a dwelling of not less than five (5) feet in width.

4. Rear yard requirements are waived in respect to a building built on a lot running through from street to street.

5. Every part of a required yard or court shall be open and unobstructed from its lowest point to the sky, except that open porches, fire escapes, open stairways and chimneys may be permitted by the Building Inspector where same are so placed as not to obstruct light and ventilation.

6. Steps and uninclosed porches may encroach on the front building line not to exceed nine (9) feet and shall not exceed one story in height.

SECTION IX – CERTIFICATE OF OCCUPANCY AND COMPLIANCE

No premises shall be occupied or used and no building now or hereafter erected or altered shall be occupied, used or changed in use until a certificate of occupancy and compliance shall have been issued by the Building Inspector, to the effect that the building or proposed use of a building, or premises, complies with all building and health laws and ordinances applicable to the premises and with the provisions of these regulations.

Certificates of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten (10) days after the erection or alteration of such buildings shall have been completed in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Building Inspector and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building affected. No fee shall be charged for original certificate applied for coincident with the application for a building permit; for all other certificates or for copies of any original certificates there shall be a charge of one dollar each.

No permit for excavation for any building shall be issued before application has been made for a certificate of occupancy and compliance.

SECTION X – PLATS

All applications for building permits shall be accompanied by a plat drawn to scale showing the actual dimension of the lot to be built upon, the size of the building to be erected, and such other information as may be necessary to provide for the enforcement of these regulations. An accurate and complete record of such applications and plats shall be kept in the office of the Building Inspector.

No yard, court or other open space provided about any building for the purpose of complying with the provisions of these regulations shall again be used as a yard, court or other open space for another building.

SECTION XI – INTERPRETATION, PURPOSE AND CONFLICT

In interpreting and applying this ordinance, the requirements contained herein are declared to be the minimum requirements for the protection of the health, morals, safety or welfare. This ordinance shall not be deemed to interfere with or abrogate or annul or otherwise affect in any manner whatsoever, any easements, covenants, or other agreements between parties provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or required larger open spaces than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants, or agreements, the provisions of this ordinance shall control.

SECTION XII - BOUNDARIES OF ZONES

Where uncertainty exists with respect to the boundaries of the various zones shown on the maps accompanying and made a part of this ordinance, the following rules shall apply:

(A) The zone boundaries are either streets or alleys, unless otherwise shown, and where the designation on the maps accompanying and made a part of this ordinance, indicating the various zones are approximately bounded by street or alley line, said street or alley shall be construed to be the boundary of such zones.

(B) Where the zone boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the zone boundaries shall be construed to be lot lines, and where the designations on the maps accompanying and made a part of this ordinance indicating the various zones are approximately bounded by lot lines, said lot lines shall be construed to be the boundary of such zones unless said boundaries are otherwise indicated on the maps.

(C) Whenever a portion of any zone is indicated upon the zoning map as a strip paralleling an opened or unopened street, the width of this strip, unless delimited on said map by lot lines or otherwise, shall be assumed to be 120 feet measured at right angles from the line of the street to which it is parallel and adjacent.

SECTION XIII – VIOLATIONS, MISDEMEANORS

The violation of any section of this ordinance is hereby declared to be a misdemeanor punishable as provided in Section 18 of Chapter 448 of the Laws of Maryland of 1927. In the case of continuing acts each day's violation is hereby declared to be a separate offense hereunder.

SECTION 15 – CHANGES AND AMENDMENTS

The right to alter, amend or repeal this ordinance is hereby expressly reserved.

Sec. 3. Effective date. This ordinance takes effect immediately on the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council